

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 4, 2014

**IN RE J.A.G. ET AL.**

**Appeal from the Juvenile Court for Putnam County  
No. 1303 TPR     John P. Hudson, Judge**

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**No. M2014-01469-COA-R3-PT**

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This is a parental termination case concerning the four minor children (collectively, the Children) of L.Y.N.G. (Mother) and K.B.G. (Father). The Department of Children's Services (DCS) was already involved with the family when it took emergency custody of the children following an incident of domestic violence between the parents. The children were placed together in foster care with relatives. They were adjudicated dependent and neglected. Fifteen months later, DCS filed a petition to terminate the parental rights of both parents. The court granted the petition based on its finding, by clear and convincing evidence, (1) that multiple grounds for termination existed and (2) that termination was in the children's best interest. Mother and Father appeal. They challenge the trial court's finding of grounds for termination, but do not raise an issue as to the trial court's determination regarding the Children's best interest. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court  
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., C.J., delivered the opinion of the Court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Sheila L. O'Regan, Granville, Tennessee, for the appellant, L.Y.N.G.

Allen Steele, Cookeville, Tennessee, for the appellant, K.B.G.

Herbert H. Slatery, III, Attorney General and Reporter, and Jordan Scott, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children's Services.

## OPINION

### I.

This case focuses on J.A.G., A.C.G., K.R-J.G., and A.L.G., referred to in this opinion as “the Children.” The first three children were born out of wedlock. The youngest child was born in 2012, after Mother and Father were married.<sup>1</sup>

DCS first became involved with the family in August 2012 after receiving a report of psychological abuse perpetrated by Father against the Children. The allegation stemmed from a domestic altercation between the parents in the Children’s presence. Two weeks later, DCS received a second report that alleged drug use by Mother and Father, marks and bruises on the Children, and deplorable conditions in the home. On August 16, 2012, DCS convened a family and child team meeting in which both parents took part. At that time, Mother and Father tested positive for drug use. Both admitted to recent use of various drugs and to domestic violence in their relationship. DCS implemented a non-custodial permanency plan with a goal of returning the Children to their parents. A DCS case manager began working with the family. Thereafter, Mother left the home, leaving Father to care for the Children.

In November 2012, the case manager conducted a home visit. Father admitted that, if given a drug screen, he would test positive. Father was unemployed at the time. The Children had been spending extended periods of time with their maternal grandmother. Father agreed to begin providing regular care for the Children.

Around Christmas Eve 2012, Mother returned home to visit the Children. A physical altercation ensued which involved Father dragging Mother by her hair out of the home. In the process, Mother dropped on the floor a pack of cigarettes in which a “crack pipe” was stored, close to where the Children were playing. During the altercation, the maternal grandfather reportedly threatened Mother with a gun. On December 27, 2012, DCS learned of the incident. When agents of DCS, along with the police, arrived at the home, Father, for the most part, corroborated the report of the incident that the case manager had received. DCS removed the Children into protective custody and placed them in foster care in the home of the maternal grandparents (Grandparents).

DCS immediately developed a custodial permanency plan with a concurrent goal of

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<sup>1</sup>Father is listed as the father on each child’s birth certificate. During the pendency of this case, however, Father underwent DNA paternity testing which revealed that he is not the biological father of the youngest child. At trial, Father testified he “love[d] the kid,” but did not want to raise him and favored splitting the children up “if that’s what it took.”

returning the Children to the parents or exiting state custody to live with a relative. Both parents signed to indicate their agreement with the plan and their understanding of the criteria for termination of their parental rights. In April 2013, the Children were adjudicated dependent and neglected. In the months that followed, DCS continued to work with both parents and revised the plan to include additional provisions. Generally stated, each parent made some efforts with their assigned tasks, but those tasks were not completed and lasting results were not achieved.

On December 11, 2013, DCS filed a petition to terminate the parents' rights. Trial was held on April 15, 2014. At that time, Mother and Father remained married, but Mother's whereabouts were unknown. No one – her case manager, Father, or the maternal grandmother, with whom the Children were living – had had contact with her in the past four months. For his part, Father conceded that, early on, he had not put forth his best efforts where the Children were concerned. Father stated he had made “great strides” since then. He opposed termination. If he regained custody, he planned to work while his parents cared for the Children.

At the time of trial, the Children had lived with Grandparents for the past fifteen months. Grandparents had a strong bond with the Children and wished to adopt them. The Children share Grandparents' four-bedroom home with Grandparents' other three children, ages fifteen, twelve, and eleven. Grandmother testified that the Children had no health issues. They were progressing well in school and daycare. Grandmother said the older kids helped out a lot with the Children.

The court terminated both parents' parental rights on the grounds of (1) substantial noncompliance with a permanency plan and (2) a persistence of the conditions which led to the Children's removal. As to Father, the court additionally found the ground of abandonment by failure to provide child support. As to both parents, the court further found that termination was in the best interest of the Children. The trial court expressly stated that both its finding of grounds for termination and its best interest determination were supported by clear and convincing evidence.

Mother and Father, represented by separate counsel, each filed a timely notice of appeal.

## II.

Mother presents issues for our review, restated slightly by us, as follows:

1. Whether the trial court erroneously terminated Mother's

parental rights on two statutory grounds: Non-compliance with the permanency plans and persistence of conditions.

2. Whether DCS failed to make reasonable efforts to provide Mother with services reasonably related to remedying the conditions that led to the Children's removal.

Father frames his single issue as follows:

Whether the trial court erred in finding that DCS provided "reasonable efforts" to reunite the family, and so erred in finding grounds for the termination of parental rights.

### III.

With respect to our review of parental termination cases, this Court recently observed as follows:

"A biological parent's right to the care and custody of his or her child is among the oldest of the judicially recognized liberty interests protected by the due process clauses of the federal and state constitutions." Although the parent's right is fundamental and superior to the claims of other persons and the government, it is not absolute. A parent's right "continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination."

In Tennessee, proceedings to terminate a parent's parental rights are governed by statute. Parties who have standing to seek the termination of a biological parent's parental rights must prove two things. First, they must prove the existence of at least one of the statutory grounds for termination, which are listed in Tennessee Code Annotated section 36-1-113(g). Several grounds for termination are listed in subsection (g), but the existence of any one of the grounds enumerated in the statute will support a decision to terminate parental rights. Second, the petitioner must prove that terminating parental rights is in the child's best interest, considering, among other things, the factors listed in Tennessee Code Annotated section 36-1-113(i). In light

of the constitutional dimension of the rights at stake in a termination proceeding, the person seeking to terminate these rights must prove all the elements of the case by clear and convincing evidence. In sum, in order to terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination, but also that termination is in the child's best interest.

*In re Alysia S.*, No. M2013-02596-COA-R3-PT, 2014 WL 7204406 at \*19 (Tenn. Ct. App. M.S., filed Dec. 17, 2014)(internal citations omitted). “Clear and convincing evidence” is “evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992).

We review this non-jury case de novo. The trial court's findings of fact come to us with a presumption of correctness that we must honor unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d). In weighing the preponderance of the evidence, great weight is accorded to the trial court's determinations of witness credibility, which shall not be reversed absent clear and convincing evidence to the contrary. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). No presumption of correctness attaches to the trial court's conclusions of law. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002); *Jahn v. Jahn*, 932 S.W.2d 939, 941 (Tenn. Ct. App. 1996).

#### IV.

We begin with Mother. The trial court terminated her rights on two grounds – substantial noncompliance with a permanency plan and persistence of conditions. Mother essentially argues (1) that these grounds trigger a mandatory, “statutory duty” by DCS to make reasonable efforts to assist her in making it possible for the Children to return home, and (2) that DCS has the burden of proving its reasonable efforts, by clear and convincing evidence, as an essential element of its termination case. Mother concludes as follows:

Because [DCS] failed to provide Mother with services reasonably related to remedying the conditions that led to removal of her children (domestic violence and drug abuse), the trial court erroneously terminated the Mother's parental rights on the grounds of non-compliance with the permanency plans and persistence of conditions.

Recently, in the case of *In re Kaliyah S.*, \_ S.W.3d \_, No. E2013-01352-SC-R11-PT, 2015 WL 273659 (Tenn. 2015), the Supreme Court directly addressed the issue of “reasonable efforts” by DCS in the context of parental termination cases. In a case of first impression, the Court expressly considered “whether the State is required to prove that it made reasonable efforts to reunify the parent with the child as a precondition to termination.” 2015 WL 273659 at \*1. The Court summarized its decision as follows:

We hold that it is not. An action to terminate the parental rights of a biological parent is governed by Tennessee Code Annotated § 36-1-113. The language of Section 36-1-113 makes the State’s efforts to assist the respondent parent one of the factors to be considered in determining whether termination of the parent’s rights is in the child’s best interest. After reviewing the language of Section 36-1-113, other pertinent statutes, the legislative history, and caselaw interpreting Section 36-1-113, we hold that, in a termination proceeding, the extent of the efforts made by the State is weighed in the court’s best-interest analysis, but the State need not prove that it made reasonable efforts as an essential component of its petition to terminate parental rights.

*Id.*

En route to its ruling, the Court expressly overruled prior appellate decisions “to the extent that those cases required the State to prove reasonable efforts as an essential component of the termination petition.” *Id.*

Obviously, the parties in the case at bar did not have the benefit of the *Kaliyah* decision in briefing their cases. Nonetheless, the holding effectively ends Mother’s appeal in the case at bar. Mother does not contend that she substantially completed the permanency plan requirements or that she has resolved the conditions that led to the Children’s removal into foster care. Nor could she successfully do so. At trial, the proof established, through the case workers’ testimony, that Mother was initially engaged in the process toward reunification. Toward the fall of 2013, however, her efforts faltered; she was in and out of the home, did not provide contact information to DCS to make scheduling of services possible, failed drug screens, and was incarcerated on a probation violation. In December 2013, after her last failed drug screen, Mother ceased contact with DCS altogether. At the time of trial, her whereabouts remained unknown. In finding grounds for termination as to Mother, the court stated:

We know she had this history of inappropriate lifestyle and

inappropriate decisions and failure to . . . fulfill her parental responsibilities. And now she's just dropped off the edge of the cliff and we don't know where she is.

I do find that she has conduct – when known to the Court . . . , for the most part, not conducive and not . . . demonstrating capacity to get these children back whether . . . by maintaining a proper household or employment or whatever it may be.

Based on the evidence presented at trial, the court concluded that DCS clearly and convincingly proved both alleged grounds for terminating Mother's rights to the Children. The evidence does not preponderate against the court's findings. Mother's argument – and her appeal – is entirely focused on her position that DCS failed to prove its "reasonable efforts" to assist her as a precondition to termination. In view of the High Court's holding in *Kaliyah*, Mother cannot prevail.

V.

A.

We now turn to Father's case. The trial court terminated his rights on the grounds of abandonment by failure to pay child support, substantial noncompliance with a permanency plan, and persistence of conditions. As to the latter two grounds, Father contends that DCS had the burden to prove that it utilized reasonable efforts to assist him in making it possible for the Children to return home. He concludes that as a result of DCS's failure to meet its burden, the termination order cannot stand. As to all of the grounds, Father challenges the sufficiency of the evidence.

First, as with Mother's case, to the extent that Father argues that "reasonable efforts" by DCS must be clearly and convincingly proven before termination can be decreed, his argument similarly fails based on the *Kaliyah* holding. Accordingly, our focus is on Father's substantive challenge to each ground for termination.

B.

The trial court found that Father abandoned the Children by failure to provide child support pursuant to Tenn. Code Ann. § 36-1-113(g)(1), as further defined in Tenn. Code Ann. § 36-1-102. The latter section provides several time periods for establishing abandonment by non-support. As relevant in the present case, Section 36-1-102 provides as follows:

(1) (A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, “abandonment” means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the . . . parent or parents or a guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that . . . parent or parents or a guardian or guardians . . . have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

\* \* \*

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and . . . has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent’s or guardian’s incarceration. . . .

Tenn. Code Ann. § 36-1-102(1)(A)(i), (iv).

At trial, the proof showed that, before the Children were removed, Father was convicted of felony offenses including forgery and sale of a Schedule II controlled substance. For the drug conviction, he served 30 days in prison, with the remainder of the sentence to be served on supervised probation. In 2013, Father was incarcerated for three days – January 10 for the domestic incident with Mother, and then January 16 and 17 for violating the conditions of his bond by seeing Mother again. Thereafter, Father violated his probation as a result of a failed drug screen. As a result, Father was ordered to serve 30 days. He was allowed to serve time on weekends, as follows: July 26-28; August 2-4, 9-11, and 16-18. In October 2013, he elected to serve out his sentence and remained in jail from Thursday, October 10 until Sunday, October 26, 2013.

In its petition, DCS alleged that Father abandoned the Children pursuant to subsection



(iv) of the statute; that is, he failed to support the Children in the four-month period immediately preceding his incarceration. At the close of trial, the court expressed some doubt as to the application of subsection (iv) in Father's case, where he served his jail time mainly in several weekend stints. The court ultimately construed subsection (iv) as requiring incarceration during "a four-month period, not in and out, in and out, but an actual four consecutive months." The court held that subsection (i), rather than subsection (iv), applied to Father because "he's serving weekends and . . . so he's out." The court concluded that termination was warranted in that Father "willfully failed to support the children for four (4) months immediately preceding the filing of the petition. . . ."

We think the trial court's approach in applying subsection (i) rather than subsection (iv) based on its reasoning that Father was "out" the majority of the time except for certain weekends and a brief period of time in the latter part of October – and thus seemingly available to see to the Children's needs – is most logical. In any event, regardless of which four-month period is applied, the end result is the same.

Before this Court, Father argues that his failure to support the Children was not willful in that he had a limited income and was told by someone at the child support office that he did not have to pay anything while he was trying to regain custody of the Children. At trial, the court concluded that the evidence showed otherwise – that Father was "able-bodied and capable and aware of his duty and didn't make that effort." The evidence does not preponderate against the court's factual conclusion. Moreover, regarding his child support obligation, Father testified, in part, as follows:

[Guardian ad litem]: Now, who's responsible to support your children?

[Father]: Me and the mother.

Q: Okay. And in the entire time that they've been incarcerated [sic] you've not paid child support?

A: No.

Q: Do you think there's anybody on earth that can relieve you of your obligation to provide support to your children?

A: I don't think there should be.

Q: So you knew you should have been supporting your children all this time?

A: Yes.

Father further admitted that he was employed while the Children were in state custody – he worked for his grandfather, at a plant nursery as needed, and at “all kind of odd-and-end jobs: landscaping, roofing, plumbing,” and was always paid in cash. He estimated he earned \$6,000 a year, but admitted he paid nothing for the Children “other than bringing them food and toys and clothes. . . .” He said he repeatedly asked grandmother if the Children needed money or clothes or “anything at all,” and she always said “no.” At the same time, Father testified he lacked 36 credit hours to earn an engineering degree from Tennessee Tech but never finished because he had to work and earn money for the family. Father admitted that he was aware that termination was a possible consequence of failing to pay child support.

The evidence does not preponderate against the court’s finding, made by clear and convincing evidence, that Father abandoned the Children by failing to support them in the four months immediately preceding the filing of the petition. The court did not err in terminating Father’s parental rights on the ground of abandonment by non-support pursuant to Section 36-1-113(g)(1), as further defined in Section 36-1-102(1)(A)(i).

C.

The trial court terminated Father’s rights pursuant to Tenn. Code Ann. § 36-1-113(g)(2). That section provides for termination where “[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan. . . .”

Within weeks after the Children entered state custody, DCS developed a new custodial permanency plan. Generally summarized, the plan charged Father with the following responsibilities: Remain sober and drug free; complete an alcohol and drug assessment and follow all recommendations; submit to random drug screens, pill counts and home visits; participate in domestic violence counseling; participate in an alcohol and drug support group and provide sponsors’ names to DCS; resolve all legal issues, avoid further criminal activity, and comply with probation conditions; obtain a source of income and submit proof of employment or employment applications to DCS; demonstrate ability to maintain a household and support the Children; and maintain contact with DCS. The plan was revised in August 2013 to additionally require that Father participate in a clinical parenting assessment and family counseling; demonstrate anger management concepts; attend daily NA/AA meetings for 90 days with verification of attendance; and continue alcohol and drug treatment aftercare. The trial court expressly ratified the plans as being reasonably related to the goal of remedying the conditions that led to foster care and found them to be in the best interest of the Children.

In support of its termination order, the court made the following findings:

[Father] has not completed the following requirements in the permanency plans. He continues to abuse drugs as evidenced by positive drug screens. He has not completed recommended A&D aftercare. He has been difficult to contact for random drug screens. He has not attended AA/NA meetings. He has not provided DCS with a name of his AA/NA sponsor. He denies having any prescription drugs for pill counts. He has not provided proof of application for employment or pay stubs. He does not have appropriate housing. He currently live with his father. His father has a history of alcoholism and violence. The home has safety hazards. He has not resolved his criminal issues . . . .

The proof shows that, as to some of his assigned responsibilities, Father took limited steps to address problematic areas in his life. He completed two intensive outpatient drug treatment programs and attended an in-home session for anger management and domestic violence. In addition, he served the required time in jail for a probation violation, and maintained contact with the Children. Still, the obstacles to reunification remain.

Father continued to use drugs as evidenced by multiple failed drug screens. Despite “completing” two intensive outpatient drug treatment programs, Father tested positive for use of oxycodone a week after the second program ended. Father failed to make himself available for other scheduled and random drug screens and Father failed to enroll in a recommended inpatient drug treatment program. Father failed to attend domestic violence counseling or after-care following his drug treatment program. As earlier discussed, he failed to support the Children or to provide proof of valid employment or suitable housing.

In view of its factual findings, the court concluded that Father “has not substantially complied with the provisions of the permanency plans and therefore his parental rights should be terminated pursuant to T.C.A. 36-1-113(g)(2).” The evidence does not preponderate against the trial court’s findings, made by clear and convincing evidence, supporting its conclusion that Father has not substantially complied with the permanency plans.

D.

The court terminated Father’s rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3). That section, commonly referred to as “persistence of conditions,” provides grounds for

termination as follows:

The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent or parents or the guardian or guardians, still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or parents or the guardian or guardians in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

In support of its finding of "persistence of conditions," the trial court found, in relevant part, as follows:

The conditions that led to the removal the children from the home . . . were [the parents'] drug abuse and domestic violence.

The conditions that prevent the children's return to the parents' home are their ongoing criminal behavior resulting in multiple arrest[s] and incarcerations, their ongoing domestic violence, their ongoing drug abuse, their failure to adequately address their drug abuse and domestic violence issues and their lack of safe and suitable housing.

At trial, the proof showed that Father had not successfully resolved his drug problem – he failed a drug screen as recently as two months before trial. His drug use had led to probation violations and periods of incarceration. Although it was not possible, in Mother's absence, to ascertain whether Father's abusive conduct toward her had ceased, Father had not taken steps to see that he could better manage himself in the future. He completed anger management and domestic violence classes, but continued counseling was recommended and Father dropped out after two sessions. Moreover, Father's psychological evaluation noted

that he was likely to suffer a relapse of his drug use and was “likely to have problems with anger management and aggressiveness.” In other areas, Father indicated that he planned to start searching for a better job to support the Children; he explained, unconvincingly, that he had not done so earlier because much of his time was spent attending classes required under the permanency plan. Father had not demonstrated that he could support or maintain safe, suitable housing for the Children. For any work he did, he was paid in cash, so that he had no employment or salary history that could be verified. He lived rent-free in a home his father owned and relied on his father to help pay the utility bills. In short, the conditions that necessitated foster care continued to persist.

Father contends, in part, that “persistence of conditions” does not apply to his case because there was no proof of the third element of this ground – that is, that “continuation of the parent . . . and child relationship greatly diminishes the child’s chances of early integration into a safe, stable and permanent home.” Tenn Code Ann. § 36-1-113(g)(3)(C). Father reasons that the “[C]hildren’s continued physical custody with maternal grandparents as foster parents was [itself] a safe, stable and potentially permanent home” so that there was no urgency to move toward termination. We must disagree. There can be no doubt that the availability and willingness of Grandparents to serve as a foster care placement was most fortunate for these children. That said, the Children were still in foster care, albeit with relatives, awaiting a chance at permanency. That Grandparents wanted to adopt the Children and give them such an opportunity does not make the need for permanency any less of a priority. Father suggests that they “would have experienced no stigma at this time in their lives to have stayed in foster care.” Again, we must disagree. As the trial court found, lasting adjustment by Father did not appear reasonably possible so that there is no way of knowing when, if ever, the Children could exit their uncertain status as “foster care children” in the absence of termination.

The evidence does not preponderate against the trial court’s finding, by clear and convincing evidence, that the conditions which necessitated foster care and prevented a safe return to Father’s custody continue to persist. The trial court did not err in terminating Father’s parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3).

## VI.

Neither Mother nor Father challenges the court’s conclusion that terminating their parental rights is in the Children’s best interest. This Court has observed, however, that “before a court in this State can terminate a biological parent’s parental rights, it must find that doing so is in the best interest of the child.” *In re Arteria H.*, 326 S.W.3d 167, 182 (Tenn. Ct. App. 2010). We therefore review the trial court’s best interest findings despite the apparent waiver of this issue. Our review is guided by reference to the non-exclusive list

of statutory factors set out in Tenn. Code Ann. § 36-1-113(i).<sup>2</sup> We proceed mindful that “the statute does not require the court to find the existence of every factor before concluding that termination is in a child’s best interest.” *Id.* (citing *State v. T.S.W.*, No. M2001-01735-COA-R3-JV, 2002 WL 970434 (Tenn. Ct. App. M.S., filed May 10, 2002). Moreover, the issue of what is in the best interest of a child must be determined from the child’s perspective and not the parents. *Id.* (citing *White v. Moody*, 171 S.W.3d at 194).

Following our review, we conclude that there is clear and convincing evidence to support the trial court’s “best interest” determination. The record reflects that the Children ranged in age from nine months to four years when they entered state custody and were placed with Grandparents. They remained together, in Grandparents’ home, when trial was held some fifteen months later. In that time, neither parent demonstrated such an adjustment

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<sup>2</sup>The statutory factors are:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child’s best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent’s or guardian’s home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent’s or guardian’s mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

of their circumstances or conduct as to make it safe for the Children to return to the parents' home. To the contrary, as to Mother, the efforts she made in the beginning of the case waned and she was unable to achieve substantial, lasting changes despite the assistance provided by DCS and other service providers. The trial court summarized the extensive services and efforts DCS made to assist both parents in these areas, among others, as follows:

The Department made reasonable efforts to assist the parents in remedying the conditions that necessitate foster care by locating a resource to provide alcohol and drug assessment[s], scheduling . . . appointments for alcohol and drug assessments; locating, obtaining funding and setting up in-home services for anger management; providing funding for alcohol and drug treatment; scheduling and obtaining funding for hair follicle drug screens on at least ten occasions; conducting field urine drug screens; coordinating and rescheduling visitation with the children; making the children available for visitation; completing background checks; conducting random home visits to assess the appropriateness and safety of the home; providing funding for alcohol and drug treatment; arranging child and family team meetings to discuss status and progress; locating and contacting inpatient rehabilitation centers to find placement for father; maintain[ing] contact with probation officers regarding compliance; obtaining funding for and scheduling a psychosocial assessment and parenting assessment; and corresponding with the assessment provider to provide additional information; [and] asking for funding for father's recommended counseling services.

On its review of the relevant statutory "best interest" factors in light of the evidence, the trial court concluded that every factor weighed in favor of termination. In short, the trial court concluded that Mother and Father "have shown little or no genuine interest in the welfare of the children."

With the Grandparents, the Children were part of a family and in a healthy environment. Although the living space was small, they had structure in their lives, a big yard, and they were involved in activities in the community and attended church. They were more calm and had their many needs met. Grandparents indicated that they wanted to adopt all four children.

On considering all of the proof, the trial court concluded that the Children's interest

was best served by granting termination and allowing them to remain with Grandparents, “together in a situation where they’re loved and cared for and comforted and parented in an appropriate manner.” The evidence does not preponderate against the trial court’s finding that terminating Mother’s and Father’s rights to the Children and opening the door to the opportunity at permanency in their young lives best serves the Children’s interest.

VII.

The judgment of the trial court terminating Mother’s and Father’s parental rights is affirmed. Costs on appeal are taxed to the appellants, L.Y.N.G. and K.B.G. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the trial court’s judgment and the collection of costs assessed below

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CHARLES D. SUSANO, JR., CHIEF JUDGE